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27 November 1974

MEMORANDUM FOR THE RECORD

SUBJECT: Conversations with Dick Kennedy, White House Staff,
Regarding the Provisions in the Foreign Assistance
Act Relating to Intelligence Activities

1. Received a call from Dick Kennedy, White House staff, today who inquired as to whether the language of the Foreign Assistance Act as it pertains to restrictions on covert activities is acceptable to the Agency. I told him I had talked to Jim Michael, State Department, who assured me the language we had recommended as far as the Agency was concerned had been accepted. Kennedy said he hoped this was the case since he was having the President call Senator Humphrey tonight and if we saw any problems in this language he wanted to be sure to include a note to that effect. I told Kennedy that while we had no objection to reporting to the appropriate committees of Congress on our covert activities on a limited basis, i.e., that is to a limited number of members, we did think there were some aspects of the language of the Hughes and Ryan amendments which should receive consideration of the Department of Justice and the Administration. These have to do with the requirement that the President personally review covert activities before they are conducted, make a finding that they are in the national interest, and submit an appropriate report to the appropriate committees of the Congress. (These reports were the ones I mentioned at the LIG meeting on 22 November 1974 and which I assumed were the reason for Kennedy's call this evening.)

2. I told Kennedy that, in accordance with my conversation with [redacted] following the LIG meeting, I have asked our General Counsel's office to get an opinion from the Department of Justice on the constitutional and legal aspects of this provision. I told him that the Department of Justice couldn't seem to see any problem in this language but we asked them to take a close look and it was my understanding that Mr. Scalia, Assistant Attorney General for Legal Counsel, is focusing on this. I

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told Kennedy it was the opinion of our General Counsel that this section would constitute an impingement on the power of the President and he would recommend that it not be accepted--but in the final analysis this was a determination on which Justice should render an opinion. I said it was my understanding that Senator Humphrey had told Senator Stennis, at the time of the original debate on the Hughes amendment, that he was going to have it knocked out in conference, but this is of course impossible at this point since the House also has a similar provision in their bill.

3. I reviewed with Kennedy the background on this matter including the meeting between Secretary Kissinger and Director Colby with the leadership of the House Armed Services and Foreign Affairs Committees, the change in the House rules affected by the Bolling/Hansen report and the fact that Chairman Morgan has not yet come to grips with the question of which members of his Committee will receive the information. I pointed out that an agreement on the part of the Executive Branch to inform the appropriate committees was one thing but to put a prohibition in law--especially the Foreign Assistance Act--that the President cannot do these things without making certain findings and reports was quite another.

4. In the course of several conversations, Kennedy requested my comments and suggestions on a note he proposes to send to the President for his telephone conversation with Senator Humphrey on the subject. In essence the note will indicate that, in the opinion of the President, legislation is not necessary especially in the Foreign Assistance Act, that he is in favor of informing the appropriate committees of Congress with respect to Agency activities, and is keeping a close eye on these activities himself. It mentions that the House of Representatives has dealt with this problem in its rules and concludes that a provision in the Foreign Assistance Act is inappropriate.

[Redacted Signature Box]

GEORGE L. CARY
Legislative Counsel

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Distribution:

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This version contains those changes we preferred and set out in our letter to Jim Frey, OMB, of 14 November 1974. It is keyed to H.R. 17234 (reported out 25 October 1974).

"SEC. 660. LIMITATION ON INTELLIGENCE ACTIVITIES. --

(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations conducted pursuant to section 102(d)(5) of the National Security Act of 1947 (50 U.S.C. 403), other than activities intended solely for obtaining necessary intelligence, unless the President finds that each such operation is important to the national security of the United States and appropriately reports, in a timely fashion, a description and scope of such operation to the committees of the Congress presently having jurisdiction to review and monitor the intelligence activities of the United States Government."

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